

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

INVITATION TO BID
(contract for goods)

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY ("METRO") WILL RECEIVE AND PUBLICLY OPEN SEALED BIDS IN THE DEPARTMENT OF FINANCE, DIVISION OF PURCHASES, 222 THIRD AVENUE NORTH, SUITE 601, NASHVILLE, TENNESSEE 37201, TELEPHONE NUMBER (615) 862-6180.

SUBJECT TO THE INSTRUCTIONS, CONDITIONS, SPECIFICATIONS, ADDENDA, AND ANY OTHER ELEMENTS OF THIS INVITATION TO BID ("ITB"), INCLUDING THOSE INCORPORATED BY REFERENCE.

This Invitation to Bid document is prepared in a Microsoft Word format. Any alterations to this document made by the bidder may be grounds for rejection of bid, cancellation of any subsequent award, or any other legal remedies available to the Metropolitan Government.

BID NUMBER: 52652MA

DATE ISSUED: 3-26-2010

BID TITLE: Novelties for Fire Prevention Week

COMMODITY CODE(S): 8014,1411

THE METROPOLITAN GOVERNMENT BUYER: Mike Allen

TELEPHONE NUMBER: (615) 862-6632 **FAX NUMBER:** (615) 862-6179

E-MAIL ADDRESS: mike.allen@nashville.gov

All bid responses must be received and time-stamped in the Division of Purchases on or before Monday April 12, 2010 by no later than 10:30 a.m., Nashville, Tennessee local time, at which time all bids will be publicly opened and read aloud.

SUBMIT SEALED BID RESPONSE TO:

**Metropolitan Government of Nashville and Davidson County
Division of Purchases
222 Third Avenue North, Suite 601
Nashville, Tennessee 37201**

Bid envelope must include the bid number, the bid opening date, and the bidder's address. Failure to provide this information on the envelope may result in the bid not being considered. Do not submit bids by fax or electronically. Bids submitted by fax or electronically cannot be accepted or considered for award. Sealed bids are required.

BID NUMBER: 52652MA BID OPENING DATE: 10:30 a.m., Monday April 12, 2010

**THIS BID PROCESS IS GOVERNED BY
THE METROPOLITAN CHARTER AND CODE OF LAWS
AND OTHER APPLICABLE LEGAL REQUIREMENTS.**

NOTICE TO BIDDERS

There may be one or more amendments to this Invitation to Bid. If your company desires to receive copies or notices of any such amendments, you must provide the information requested below to Metro Purchasing. Please send this information to Jan Wiles via fax at (615) 862-6179 or by e-mail at jan.wiles@nashville.gov. **Metro will send amendments only to those firms that timely complete and return this form via fax or provide the requested information by timely e-mail.**

| | |
|-----------------|---------|
| ITB number | 52652MA |
| Company name | _____ |
| Mailing address | _____ |
| | _____ |
| | _____ |
| Phone number | _____ |
| Fax number | _____ |
| Contact person | _____ |
| E-mail address | _____ |

Send amendments by (check one): ☐ fax ☐ e-mail

E-mailed amendments will be sent in a Microsoft Word format. Any alterations to the document made by the bidder may be grounds for rejection of bid, cancellation of any subsequent award, or any other legal remedies available to the Metropolitan Government.

Amendments also will be posted on the Metro Government Purchasing web site (http://www.nashville.gov/Finance/Support_Services/purchasing/bob_letter.htm) in a PDF format. Check the Expanded Bid Information page for the particular Invitation to Bid for any posted amendments.

INSTRUCTIONS AND CONDITIONS

1. These documents constitute the complete set of specification requirements and bid response forms. **The bidder is responsible for insuring that all pages and all addenda are received.** The Metropolitan Government advises all bidders to closely examine this ITB package, and to immediately direct any questions regarding the completeness of this ITB package and any addenda thereto to the Division of Purchases of the Metropolitan Government. **Unless otherwise directed in writing by the Division of Purchases, the bidder must submit all bid responses on the bid response form provided with this ITB. The Metropolitan Government will not accept bid responses on bidder's letterhead and/or quotation forms.**
2. All bid responses must be typewritten or written legibly in ink and signed by an individual authorized to bind the bidder. **Properly notarized signatures are required where indicated; failure to comply with this requirement shall be cause for rejection of bid response.** Erasures, white-outs and typeovers, and other modifications must be initialed. Bidders are cautioned to verify their bid response prior to submission. Bid responses may only be withdrawn under the limited circumstances stated in Regulation Number R4.12.030 of the Procurement Standards Board of the Metropolitan Government.
3. Bid responses must be submitted in a sealed, properly marked envelope and filed on or before the date and time specified for the receipt of bids responses. **No late bid responses will be accepted.** The Metropolitan Government shall not be responsible for bid responses that are mailed or sent via private delivery services.
4. **The Metropolitan Government will not accept bid responses submitted by fax or electronic mail.**
5. Any contract awarded pursuant to this ITB shall be awarded to the lowest responsive and responsible bidder whose bid response meets the requirements and criteria set forth in this ITB. A "responsive bidder" means a person who has submitted a bid response which conforms in all material respects to the ITB (Metropolitan Code 4.12.010). A "responsible bidder" means a person who has the capacity in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance (Metropolitan Code 4.12.040).
6. Any changes made to this bid document may delay any contract award and execution. Additionally, changes made to this bid document may disqualify the bid response as non-responsive.
7. Pursuant to Regulation Numbers R4.12.020.10 and R4.12.030.11 of the Procurement Standards Board of The Metropolitan Government of Nashville and Davidson County, bid responses may be modified by written notice received by the office specified herein for receipt of bid responses prior to the date and time for public opening of bids. Late modifications cannot be considered.
8. Certain mistakes may be corrected so long as the intended correct bid response is clearly evident (see Regulation R4.12.030.13 of the Procurement Standards Board for more thorough explanation).

9. Substitutions will not be permitted unless specifically provided for in this ITB. If this ITB specifies that substitutions are permitted, any particular manufacturer, brand, model, make or detailed description set forth in the specifications is for descriptive purposes only and a bidder may substitute articles so long as they are of similar character, quality and design as that specified, and will serve the purpose for which the article is to be used equally well as that specified, and is equally suited to the needs of the Metropolitan Government as that specified. If bidding a substitute article, a bidder must provide the manufacturer's name and catalogue reference, specifications for the substitute article, and/or other information that will enable the Purchasing Agent to make the determination of similarity, serviceability and suitability of the substitute. The Metropolitan Government reserves the right, through the Purchasing Agent, to be the sole judge in making such determination. **UNLESS THIS ITB SPECIFIES THAT A SUBSTITUTE ARTICLE IS PERMITTED, IT IS UNDERSTOOD THAT THE ARTICLE TO BE PROVIDED BY THE BIDDER, IF SUCCESSFUL, WILL BE OF THE SAME MANUFACTURE, BRAND, MODEL, MAKE AND/OR WILL MATCH THE DETAILED DESCRIPTION SET FORTH IN THE SPECIFICATIONS.**
10. Unless receipt of this ITB is acknowledged in the form of a bid response or a written notification of "no bid", bidder's name may be removed from the applicable commodity code mailing list.
11. **ALL BIDDERS WHO ARE AWARDED CONTRACTS AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS SET FORTH BELOW:**
- a) The awarded bidder shall not assign, transfer, convey or otherwise dispose of the contract, or the right, title or interest in or to the same of any part thereof, without the prior written consent of the Metropolitan Government, and the awarded bidder shall not assign by power of attorney or otherwise any of the moneys to become due and payable under the contract. Breach of this provision shall be a material breach.
 - b) It is understood that it is necessary for the Metropolitan Government to have a continuous and uninterrupted flow of supplies and materials and services and the awarded bidder must furnish and make the deliveries of supplies, materials, and services accordingly.
 - c) The contract is subject to all charter and code provisions of the Metropolitan Government. It is hereby agreed that the provisions of all ordinances and resolutions of the Metropolitan Government relating to bidders and contractors are hereby made a part of the contract.
 - d) Should awarded bidder fail to fulfill, in a timely and proper manner, its obligations under the contract, or if it should violate any of the terms of the contract, the Metropolitan Government shall have the right to immediately terminate the contract. The Metropolitan Government may terminate the contract at any time, with or without cause, upon sixty (60) days written notice to bidder. Should funding for the contract be discontinued, the Metropolitan Government shall have the right to terminate the contract immediately upon written notice to the awarded bidder.
 - e) The Metropolitan Government, at its option, and in lieu of immediate termination, may request that the awarded bidder repair or replace any defective goods or correct performance by written notice to awarded bidder. In that event, awarded bidder shall take corrective action within thirty (30) days. Exercise of this option shall not relieve

awarded bidder of any liability to the Metropolitan Government for damages sustained by virtue of awarded bidder's breach.

- f) The contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in accordance with 4.24.020 of the Metropolitan Code of Laws.
 - g) No waiver of any provision of the contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
 - h) Awarded bidder agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the Metropolitan Government prevails, awarded bidder shall pay all expenses of such action including the Metropolitan Government's attorney fees and costs at all stages of the legal action.
 - i) The contract sets forth the entire agreement between the parties with respect to the subject matter thereof and shall govern the respective duties and obligations of the parties.
 - j) The validity, construction and effect of the contract, and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.
 - k) Should any provision of the contract be declared to be invalid by any court of competent jurisdiction, such provision shall be served and shall not affect the validity of the remaining provisions of the contract.
 - l) Contractor shall indemnify and hold harmless the Metropolitan Government, its officers, agents and employees from:
 - i) any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts of omission of awarded bidder, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of this contract; and
 - ii) any claims, damages, penalties, costs, and attorney's fees arising from any failure of awarded bidder, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - m) Awarded bidder shall maintain insurance sufficient to cover any claims arising from the acts of the awarded bidder in connection with the performance of this contract, in compliance with the Insurance Requirements in the Special Conditions of this ITB, and subject to the approval of the Metropolitan Government.
12. Bidder is entitled to protest to the Purchasing Agent in connection with the ITB or award of a contract (Metropolitan Code 4.36.010). Bidder also has the right to appeal the decision of the Purchasing Agent to the procurement appeals board (Metropolitan Code 4.36.110). This appeal must be filed within seven (7) days of receipt of the Purchasing Agent's decision. In addition, bidder may appeal the decision of the Purchasing Agent to debar or suspend bidder from consideration for award of contracts (Metropolitan Code

4.36.120). This appeal must be filed within thirty (30) days of receipt of the Purchasing Agent's decision.

13. The Purchasing Agent does hereby expressly reserve the right to reject any and all bid responses, the right to request additional information, the right to clarify bids, the right to award a contract for only some but not all the articles or items in the bid, and does further expressly reserve the right to waive minor irregularities. The Metropolitan Government does not warrant or guarantee that a contract will be awarded as a result of this ITB.
14. Any prospective Bidder desiring an explanation or interpretation of this ITB, drawings, specifications, etc., must request such explanation in writing no later than two (2) days prior to the bid submission date. Any information provided by the Metropolitan Government to a prospective bidder concerning this ITB shall be in the form of a written addendum furnished to all prospective bidders, at the sole discretion of the Metropolitan Government.
15. Where more than one item is listed, any item(s) not bid upon should be indicated "No Bid". Any and all items left blank will be considered a "No Bid" for that item. If no items are bid on, the "*Statement of No Bid*" should be returned, with the envelope plainly marked "No Bid" with the bid number.
16. A bidder desiring to bid "No Charge" must so indicate; otherwise the bid will be construed as incomplete and may be rejected.
17. Bidders are cautioned that any condition, qualification, provision, or comment in its bid response, or in other correspondence transmitted with their bid response, which in any way modifies, takes exception to, or is inconsistent with the specifications, requirements, or any of the terms, conditions, or provisions of this ITB, shall be sufficient cause for the rejection of its bid response as non-responsive.
18. **BIDDER, BY SIGNING AND MAKING THIS BID, MAKES THE FOLLOWING AFFIRMATIVE DECLARATION AND STATEMENT AS OF THE DATE SAID BID IS SIGNED, TO WIT:**
 - a) Bidder, after being first duly sworn, affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to the individual's race, creed, color, national origin, age or sex and it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.
 - b) It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy.
 - c) Bidder understands that it shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement

standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.

- d) Bidder also understands that it shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract of the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- e) Bidder also understands that it shall be a breach of ethical standards for a person to be retained, or to retain a person to solicit or to secure a Metropolitan Government contract upon the agreement or understanding for a contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- f) Bidder represents that bidder has not retained any person in violation of the previous paragraph.
- g) A breach of ethical standards could result in civil and/or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.

- 19. **BIDDER, BY SIGNING AND MAKING THIS BID**, does further declare, in determining the prices and/or amounts of the bid, that bidder has not colluded with any other person, firm, corporation or association in arriving at said prices and/or amounts or in any way violated the terms, conditions and/or spirit of the provisions of 15 U.S.C. 1 through 7 (Sherman Anti-Trust Act).
- 20. Price quoted must be the price for new merchandise that is free from defects. Any bid responses which modify the requirements of this ITB will not be considered and may result in a determination that a bid response is deemed non-responsive.
- 21. Deliveries of all items shall be made as stated in the bid specifications. In the appropriate blank on the bid response form, the Bidder must indicate the best delivery date after receipt of order. Deliveries resulting from this ITB are to be made during the normal working hours of the Metropolitan Government. Time is of the essence and the bidder's delivery date must be specified and adhered to. Should the awarded bidder fail to deliver items on or before its stated date, the Metropolitan Government reserves the right to cancel the order or contract. The awarded bidder(s) shall be responsible for making any and all claims against carriers for missing or damaged items.
- 22. Delivered items will not be considered "accepted" until an authorized agent for the Metropolitan Government has, by inspection or test of such items, determined that they fully comply with specifications. The Metropolitan Government may return, for full credit and at no expense to the Metropolitan Government, any item(s) received which fail to meet the specifications as stated in this ITB.
- 23. All deliveries made pursuant to this ITB and a contract award must be made pursuant to written purchase order of the Metropolitan Government Purchasing Agent ("Purchasing Agent"). **The Metropolitan Government assumes no liability for goods and/or services provided without a written purchase order from the Purchasing Agent.**

Unless otherwise specified in this ITB, delivery charges are to be prepaid and included in the bid price.

24. The Metropolitan Government is exempt from federal and state taxes. Upon request, the Purchasing Agent will provide an exemption certificate to the awarded Bidder. Vendors doing business with the Metropolitan Government shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations to the Metropolitan Government, nor shall any vendor be authorized to use the Metropolitan Government's Tax Exemption Number in securing such materials.
25. If awarded Bidder subcontracts any portion of the contract for any reason, it must provide, in writing, the name and address of the subcontractor, name of the person to be contacted including telephone number and extent of work to be performed. This information should be submitted with bid response; however, if not included, it shall be the responsibility of the awarded Bidder to submit to the Purchasing Agent the subcontractor for approval prior to commencement of work. The Metropolitan Government reserves the right to reject a bid response of any bidder if, in the sole discretion of the Metropolitan Government, the bid response names a subcontractor who has previously failed in the proper performance of an award or failed to deliver on time contracts of a similar nature, or who is not in a position to perform properly under the award.
26. Payment will be made by the Metropolitan Government after commodities and/or services have been received, accepted, and properly invoiced as indicated in the contract and/or purchase order. Invoices must bear the purchase order number.
27. The awarded bidder must strictly comply with federal, state, and local building and safety codes. Equipment must meet all federal and state safety regulations for grounding of electrical equipment and for lockout/tagout processes.
28. Bidder certifies that all material, equipment, processes, etc., contained in its bid response meets all OSHA., ANSI, NFPA and all other federal and state requirements. Bidder further certifies that, if it is the successful bidder, and the material, equipment, etc., delivered is subsequently found to be deficient in any of the aforementioned requirements in effect on the date of delivery, all costs necessary to bring the material, equipment, processes, etc., into compliance shall be borne by the awarded bidder.

Special Conditions
Novelties Fire Prevention Week
ITB #52652MA

INTRODUCTION AND GENERAL SPECIFICATIONS

Invitation to Bid for a 5 year contract to provide a contract for Novelties and promotional items needed for Fire Prevention week. Also we are requesting a discount from list price for a catalog that you may submit with your bid that will be available for other Metro Departments to use as needed.

Vendors shall bid on the item number specified only. All bids for alternative brands will be rejected as non-responsive.

(Please Send One Extra Copy of Pages 13 through 22 with Your Bid)

- The Nashville Fire Department needs available advertising/promotional supplies for Fire Prevention Week (for Public Fire Education). This is a 5 year, indefinite quantity, contract. The Fire Department and other Metro Departments will order supplies as needed from this contract.
- All freight and delivery charges are to be included in your product price.
- The prices you submit on the items listed will need to be firm for one year following the effective date of the contract. (Please read the escalation section on page 8)
- **Metro shall award the bid to the responsible and responsive bidder offering the lowest overall price.** Each bidder would be required to bid on at least 90% of the items listed or your bid would be disqualified.
- The items listed are from 2 popular catalogs in the promotional/novelty industry that we have researched and used in the past. You may price that particular item number or submit an approved equal (Metro reserves the right to determine if the submission is an approved equal). You must list the item number you are bidding for each item and the manufacturer or catalog it is located in. If you bid the exact item requested (List on you bid item As Specified). Also at the bottom of page 19 of the pricing sheet. Please list your discount from catalog for the Positive Promotions Catalog that seems to be popular for items we have requested. You also have the opportunity to list your discount on your most popular novelties catalog your company would like to submit. Please submit with your bid a 2010 catalog for us to review one or both catalogs you submit.
- The awarded vendor will need to call and communicate the delivery date and the hours shall be only between 8:00am and 3:00 Pm Monday thru Friday. The location will be the Nashville Fire Southeast, located at 1417 Murfreesboro Road Dock 38, Nashville, Tennessee 37217.
- **The Fire Department Management staff will have responsibility in determining if the items you bid meet the needs and specifications required and will document any disqualifying specifications before an item is disqualified.** IMPORTANT: A sample of some items may be required after all bids have been reviewed. Your samples if needed will need to be shipped to Nashville Fire Southeast, located at 1417 Murfreesboro Road

Dock 38, Nashville, Tennessee 37217 to the attention of Heather Hooper. (Please Do NOT Send Samples Until We Request Them).

- Some items will require printing or logos with the Nashville Fire Department name placed on the items. Your price quoted for this additional printing must be priced accordingly to past printing quotes for these items. Higher than normal prices or quotes for these items could be justification or a cause to cancel your contract.
- **A representative copy of the Metro contract is included with this bid package. It immediately follows the Invitation to Bid document.**

CONTRACT LENGTH AND PRICING

If an award is made, any contract resulting from this ITB will be effective on the date the contract is signed by all required parties and is filed in the office of the Metropolitan Clerk. Metro contemplates that the contract term will begin on or about May 15, 2010, with the contract term ending on May 14, 2015. The contract may not be renewed. In no event shall the term of the contract exceed five (5) years.

Escalation/de-escalation: PRICES QUOTED SHALL BE FIRM FOR ONE YEAR FOLLOWING THE EFFECTIVE DATE OF CONTRACT. WRITTEN REQUESTS FOR PRICE CHANGES IN TERM CONTRACTS AFTER THE FIRM PRICE PERIOD MAY BE SUBMITTED IN WRITING TO THE PURCHASING DIVISION. ANY INCREASE WILL BE BASED ON A VENDOR/CONTRACTOR'S ACTUAL COST INCREASE ONLY, AS SHOWN IN WRITTEN DOCUMENTATION. ALL REQUESTS FOR PRICE INCREASES MUST BE IN WRITING, MUST NOT CONSTITUTE INCREASES IN PROFIT, AND MUST CONTAIN DATA ESTABLISHING OR SUPPORTING THE GENERAL OR INDUSTRY WIDE NATURE OF THE CHANGE.

AT THE OPTION OF METRO, (1) THE REQUEST MAY BE GRANTED, (2) THE CONTRACT MAY BE CANCELLED AND AWARDED TO THE NEXT LOWEST RESPONSIVE AND RESPONSIBLE BIDDER WHOSE BID MEETS THE REQUIREMENTS AND CRITERIA SET FORTH IN THE INVITATION TO BID, (3) THE COMMODITY/SERVICE MAY BE READVERTISED FOR AWARD AND SUBSEQUENT CANCELLATION, OR (4) CONTINUE THE CONTRACT WITHOUT CHANGE.

THE PURCHASING DIVISION WILL ACCEPT OR REJECT ALL SUCH WRITTEN REQUESTS WITHIN THIRTY (30) WORKING DAYS OF THE DATE OF RECEIPT. IF APPROVED, THE PURCHASING DIVISION WILL NOTIFY THE CONTRACTOR OF THE DATE THE INCREASE WILL BE EFFECTIVE. CONTRACTORS MUST HONOR ALL PURCHASE ORDERS DATED UP TO THIRTY (30) DAYS SUBSEQUENT TO THE PRICE CHANGE REQUEST AT THE ORIGINAL PRICE.

INSURANCE REQUIREMENTS

Any vendor receiving an award shall be required to provide proof of this insurance, in the form of a Certificate of Insurance. The awarded vendor must provide Metro with original Certificates of Insurance within fifteen days of notification of award. General Liability and automobile

liability policies must be endorsed to include The Metropolitan Government of Nashville & Davidson County as an additional insured with respect to liability arising out of work or operations performed by on behalf of vendor. The following insurance(s) shall be required:

- a) ☐ Products Liability Insurance in the amount of one million (\$1,000,000.00) dollars (If the vendor will be shipping to a receiving department of Metro)
- b) ☒ General Liability Insurance in the amount of one million (\$1,000,000.00) dollars (if the vendor will be making on-site delivery)
- c) ☐ Professional Liability Insurance in the amount of one million (\$1,000,000.00) dollars
- d) ☒ Automobile Liability Insurance in the amount one million (\$1,000,000.00) dollars (if vendor will be making on-site deliveries)
- e) ☒ Worker's Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee. (Not required for companies with fewer than five (5) employees.)
- f) ☐ Other Insurance .

METHOD OF AWARD

If an award is made, Metro shall award a contract to the responsible and responsive bidder offering the lowest Evaluated Bid Price (EBP) for the total group of items, as defined below.

The Purchasing Agent has authorized the use of an Evaluated Bid Price award methodology in this Invitation to Bid in order to encourage and assist small business participation in Metro's procurement process. The EBP will be calculated through the use of a formula that discounts bids offered by small businesses (including minority-owned and woman-owned small businesses) by the following percentage:

seven (7) percent

This discount will be used for bid evaluation purposes only. The formula to be used in calculating the EBP of a small business is as follows:

$$\text{EBP} = \text{unit bid price} \times 0.93$$

A Small Business, as defined by the Metro Procurement Code, is “. . . a United States business which is independently owned and operated and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.” Furthermore, in order to qualify as a small business, a business must meet the size standards established by the Metro Procurement Code. These standards are included with this bid package.

If Bidders desire to claim status as a small business, it must 1) be registered to do business with Metro, and 2) have been approved as a small business through the submission to Metro of documentation to confirm small business status including a copy of their two most recently submitted business tax returns as well as IRS form 941- Employer's Quarterly federal tax return. Metro's small business standards are included as an Exhibit to this ITB. This information will be reviewed by Metro and used to confirm the small business status. Small business status must be approved by Metro prior to bid

submission. **While Metro commits to having documents reviewed and status granted as quickly as possible after the receipt of the necessary documentation, to be safe, documents should be submitted no later than four days before the bid is due to allow time for status to be granted.** For the purposes of this procurement, Metro will not consider subcontractor small business participation in the EBP.

Metro will not discount bids submitted by businesses that do not qualify as small businesses in accordance with Metro's definition and size standards. The EBPs for businesses that do not qualify as small businesses shall be the same as the unit prices offered by those businesses.

Metro will not discount bids submitted by businesses that do not qualify as small businesses in accordance with Metro's definition and size standards. The EEBPs for businesses that do not qualify as small businesses shall be the same as the unit prices offered by those businesses.

The EEBP is being used for evaluation purposes only. Awarded prices shall be the same as the unit prices bid.

BIDDER REGISTRATION

If the successful bidder is not registered with the Metropolitan Government as a vendor, the bidder will be required to complete a Metro vendor application in order to be awarded the bid. If the awarded bidder does complete the online registration within 48 hours of the request by Metro, Metro may determine that the bidder shall be deemed non-responsible and not be considered for award.

TIMELINESS

In the event a contract offer is made as a result of this ITB, bidder shall have fifteen (15) business days, from the date contract is issued, to supply Metro with the required information; including signatures, notarizations, and insurance certificate as stated in this ITB document. Failure to supply these items in a timely manner may result in Metro rescinding the contract offer.

BID RESPONSE
Novelties Fire Prevention Week
ITB #52652MA

CONTRACT SIGNATOR

In order to complete the contract signature process faster, list the name, address, phone number, fax number, and email address of the person responsible for the signing of contracts. In the event a contract offer is made as a result of this ITB, any contract documents will be sent to the person listed below. **(Please Print or Type)**

Company Name: _____

Attention:

Address: _____

City/ST/Zip:

Phone: _____

Fax:

Email: _____

Fire Prevention Advertising Novelties
(Please Send One Extra Copy of Pages 13 through 22 with Your Bid)

| Item No | Qty | Description | Price Each | Extended Price |
|---------|-------|---|------------|----------------|
| 1. | 1,500 | Whistle Key Light, Keychain that includes a whistle and a Red Light. Red in color. Item number 291000 in Stephens Catalog or approved equal List Item Number your Bidding and the Manufacturer/Catalog and page number _____ | \$_____ | \$_____ |

1,500 Item number 5221 in Alert –All Catalog
List Item Number your Bidding
and Manufacturer/Catalog and
page number
_____ \$ _____ \$ _____

2. 2500 Awareness Bracelets: Glow in the dark or in
various colors, Bracelets Made of a rubber
material. With stock message of example:
When Fire Strikes, Get Out and Stay Out.
Item number BRAC-3 in Catalog
Stephens or approved equal
List Item Number your Bidding
and Manufacturer/Catalog and
page number
_____ \$ _____ \$ _____

2500 Item number 691 in Alert –All Catalog or
approved equal
List Item Number your Bidding
and Manufacturer/Catalog and
page number
_____ \$ _____ \$ _____

3. 2,500 Fluorescent 12" Wood or plastic Ruler:
WOOD OR PLASTIC RULER WITH
SAFETY MESSAGE IMPRINTED AS
WELL AS DEPARTMENT NAME,
COMES IN MULTIPLE BRIGHT
COLORS.
Item number 4-F in Catalog Stephens or
approved equal
List Item Number your Bidding
and Manufacturer/Catalog and
page number
_____ \$ _____ \$ _____

2,500 Item number 75 in Alert –All Catalog or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

4. 1,500 Mood Pencils: THESE PENCILS WILL CHANGE COLORS WHEN EXPOSED TO THE HEAT OF YOUR HAND. THEY COME WITH PRE-PRINTED FIRE SAFETY MESSAGES OR CUSTOM MESSAGE. VARIOUS COLORS

Item number Mood in Catalog Stephens or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

1,500 Item number 790H in Alert –All Catalog or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

5. 10,000 Glow in the Dark Tattoos and Temporary Tattoos

Item number T-1 thru T-10 in Catalog Stephens or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

- | | | | | |
|----|--------|---|----------|----------|
| | | | \$ _____ | \$ _____ |
| | 10,000 | Item number 692 through 698 in Alert –All Catalog or approved equal | | |
| | | List Item Number your Bidding and Manufacturer/Catalog and page number | | |
| | | | \$ _____ | \$ _____ |
| 6. | 20,000 | Plastic Fire Helmets: STOCK PLASTIC FIRE HELMET WITH FRONT IMPRINTED BADGE OF CHOICE. RED IN Item number 6784-Flame in Catalog Stephens or approved equal | | |
| | | List Item Number your Bidding and Manufacturer/Catalog | | |
| | | | \$ _____ | \$ _____ |
| | 20,000 | Item number 552R in Alert –All Catalog or approved equal | | |
| | | List Item Number your Bidding and Manufacturer/Catalog | | |
| | | | \$ _____ | \$ _____ |
| 7. | 15,000 | Flash Teaches Fire Safety Coloring Books: RHAVE FUN WITH FLASH AS HE SHOWS HOW TO KEEP KIDS AND THEIR FAMILIES SAFE FROM FIRE! COLORING BOOK THAT HAS VARIOUS ACTIVITIES ENCLOSED | | |
| | | Item number CB1101C in Catalog Stephens or approved equal | | |
| | | List Item Number your Bidding and Manufacturer/Catalog and page number | | |
| | | | \$ _____ | \$ _____ |
| 8. | 5,000 | Cappy Fun Pages: 4 ACTIVITY PAGES. GOOD FOR ALL AGES. HAS HIDDEN CODE, WORD | | |

SEARCH, MAZE, CONNET DOTS
AND CROSSWORD PUZZLE

Item number 254 in Alert –All Catalog or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog

_____ \$ _____ \$ _____

9. 30,000 JUNIOR FIREFIGHTER GOLD FOIL
STICKER BADGE. IMPRINTED
WITH DEPARTMENT NAME.

Item number B-2 in Catalog Stephens or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

_____ \$ _____ \$ _____

- 30,000 Item number 53 in Alert –All Catalog or
approved equal
List Item Number your Bidding
and Manufacturer/Catalog

_____ \$ _____ \$ _____

10. 2,000 RETRACTABLE INK PEN, RED IN
COLOR, WITH DEPARTMENT NAME
OR SAFETY MESSAGE IMPRINT

Item number TRB in Catalog Stephens or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

_____ \$ _____ \$ _____

- 2,000 Item number 875 in Alert –All Catalog or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog and

page number

_____ \$ _____ \$ _____

11. 1500

Oven Sticks: THESE OVEN STICKS ARE DESIGNED SO THAT YOU CAN PUSH IN AND PULL OUT YOUR OVEN RACK WITHOUT BURNING YOURSELF. CAN BE CUSTOMIZED WITH FIRE DEPARTMENT NAME AND/OR SAFETY MESSAGE

Item number 90070 in Catalog Stephens or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

1500

Item number 030- in Alert –All Catalog or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

12. 300

THESE MITTS MUST BE THE LONG ONES SO THAT IT COMES HIGHER ON THE FOREARM OF THE PERSON WEARING IT. WOULD LIKE TO HAVE THEM IN RED WITH A STANDARD SAFETY MESSAGE IMPRINTED ON THEM.

Item number 093R in Alert –All Catalog or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

13. 2500 Pencil Pouches: ZIPPERED PENCIL BAGS WITH OR WITHOUT CUSTOM LOGO. VARIOUS COLORS TO CHOOSE FROM.

Item number PE in Catalog Stephens or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

- 2500 Item number 115R in Alert –All Catalog or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

14. 2500 Book Mark:
THINK FIRE SAFETY BOOK MARK THAT REMINDS YOU TO PRACTICE YOUR FIRE ESCAPE PLAN AND KNOW 2 WAYS OUT AS WELL AS REMINDS YOU TO CHANGE YOUR BATTERIES IN YOUR SMOKE DETECTOR

Item number 618 in Alert –All Catalog or approved equal

List Item Number your Bidding and Manufacturer/Catalog and page number

_____ \$ _____ \$ _____

15. 2500 Smoke Detector Cling- On
CLING-ON TO PLACE ON
REFRIGERATOR OR ANOTHER
VISIBLE PLACE THAT WILL REMIND
TENANTS IN THEIR HOMES TO
TEST THEIR SMOKE DETECTORS
ONCE A MONTH

Item number 479 in Alert –All Catalog or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

\$_____ \$_____

16. 1500 Smoke Detector Brochure:
THIS BROCHURE NEEDS TO
COVER ALL ASPECTS OF PLACING
A SMOKE DETECTOR AS WELL AS
THE MAINTENANCE OF ONE AS
WELL.

Item number 172 in Alert –All Catalog or
approved equal

\$_____

List Item Number your Bidding
and Manufacturer/Catalog

\$_____

17. 1500 Prevent Fires Before They Start
Brochure:
THIS BROCHURE WILL NEED TO
INCLUDE TIPS SUCH AS TESTING
THE SMOKE DETECTOR, PLAN
AND PRACTICE A FIRE EXIT DRILL,
KITCHEN SAFETY, HEATING
EQUIPMENT, ELECTRICAL SAFETY

Item number 748 in Alert –All Catalog or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

- | | | | | |
|-------|------|---|----------|----------|
| | | | \$ _____ | \$ _____ |
| <hr/> | | | | |
| 18. | 1500 | <p>Tips on How and When to Use A Fire Extinguisher: Should contain Information on Different Types of Extinguishers, How To use one, When to use one.</p> <p>Item number 722 in Alert –All Catalog or approved equal</p> <p>List Item Number your Bidding and Manufacturer/Catalog and page number</p> | | |
| | | | \$ _____ | \$ _____ |
| <hr/> | | | | |
| 19. | 1500 | <p>Winter Fire Safety Brochures: THIS BROCHURE SHOULD COVER SAFETY CONCERNS REGARDING GRILLING WITH GAS AND CHARCOAL AS WELL AS ANY OTHER SAFETY CONCERNS REGARDING FIRES IN THE SUMMER. THE WINTER BROCHURE SHOULD COVER CANDLES, HEATERS CHRISTMAS DECORATIONS ETCS.</p> <p>Item number 716 in Alert –All Catalog or approved equal</p> <p>List Item Number your Bidding and Manufacturer/Catalog</p> | | |
| | | | \$ _____ | \$ _____ |
| <hr/> | | | | |
| 20. | 1500 | <p>Safety Brochure For Senior Citizens: THIS BROCHURE WILL NEED TO INCLUDE FIRE TIPS FOR THE ELDERLY COMMUNITY.</p> <p>Item number 720 in Alert –All Catalog or approved equal</p> <p>List Item Number your Bidding and Manufacturer/Catalog and page number</p> | | |
| | | | \$ _____ | \$ _____ |
| <hr/> | | | | |

21. 1500 Play It Safe, Plan Home Fire Drills:
BROCHURE SHOULD CONTAIN
TIPS ABOUT OPENING DOORS
DURING A FIRE, ESCAPE PLANS,
POSSIBLE EXITS, CRAWLING
BELOW THE SMOKE, FIRE RISKS
WITHIN THE HOME, ETC.

Item number 758 in Alert –All Catalog or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

_____ \$ _____ \$ _____

22. 1500 Home Fire Prevention Brochure: FIRE
SAFETY TIPS FOR EVERYROOM IN
THE HOUSE INCLUDING GARAGE
AND WORKSHOP. CHECKLIST TO
Follow.

Item number PH-200 in Catalog Stephens
or approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

_____ \$ _____ \$ _____

- 1500 Item number 86- in Alert –All Catalog or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

_____ \$ _____ \$ _____

23. 1500 Carbon Monoxide Brochure:
A BROCHURE THAT LIST THE
DANGERS, EFFECTS OF CARBON
MONOXIDE AND HOW TO
PROTECT YOUR HOME.

Item number 750 in Alert –All Catalog
or approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

_____ \$ _____ \$ _____

24. 1500 Kitchen Fire Safety Brochure:
THIS BROCHURE SHOULD
CONTAIN INFORMATION ON
COOKING SAFETY TIPS AND WHAT
TO DO WHEN A FIRE STRIKES IN
THE KITCHEN

Item number 724 in Alert –All Catalog or
approved equal

List Item Number your Bidding
and Manufacturer/Catalog and
page number

_____ \$ _____ \$ _____

ALL TOTAL Extended Price \$ _____

Approximate Days for delivery when ordered _____

What is your Catalog Discount Price for all the items in the Positive Promotions Catalog
_____ %?

What is your Catalog Discount Price for all the items in the (Your Choice
Novelties/Promotional Catalog) Name _____ **Discount** _____ %

BID RESPONSE
Novelties For Fire Prevention Week
ITB #52652MA

Discount (No discount under thirty (30) days will be considered)

_____ % 30 days _____ % (__th.) prox.

If the Contract is awarded, the price(s) will be in effect for the length of the Contract.

If this is a one-time open market purchase, will awarded bidder honor price(s) for other Metropolitan Government agencies? ☐ Yes ☐ No

Will awarded bidder honor price(s) for other local governments in Tennessee? ☐ Yes ☐ No

How many days will awarded bidder honor price(s)? _____

In compliance with this ITB, and subject to all conditions thereof, the undersigned agrees that if this bid response is accepted within _____ days from the date of opening, to furnish any or all of the items upon which price(s) are quoted, at the price set opposite each item, and unless otherwise specified, within _____ days after receipt of order.

**THIS BID RESPONSE SHALL BE REJECTED IF SIGNATURE IS NOT PROPERLY
NOTARIZED AND AFFIXED WHERE INDICATED**

Name of Firm: _____
(Legal company name: Include any doing business as or subsidiary names)

Authorized Signature and Date: _____

Name Printed and Title: _____

Address: _____

Telephone Number: _____ Fax Number: _____

E-Mail: _____

Personally appeared _____, who is the _____

of _____ and as such is authorized to execute this document.

Sworn to and subscribed before me this _____ day of _____, _____

Notary Public: _____ My Commission Expires: _____

ACCEPTANCE

Accepted as to items numbered _____ Date _____

Purchasing Agent

STATEMENT OF NO BID
Novelties Fire Prevention Week
ITB #52652MA

If bidder is not bidding on the goods and/or services as stated in this ITB, please complete and return this form to: The Metropolitan Government of Nashville and Davidson County, Division of Purchases, 222 Third Avenue North, Suite 601, Nashville, TN 37201

Name of Firm: _____

Address: _____

Signature: _____

Telephone Number: _____ Date: _____

The above has declined to submit a bid response for the following reason(s) (please check all that apply):

Specifications too "restrictive", i.e., goods offered by our company do not meet stated specifications.

Specifications unclear (please explain).

We do not offer this commodity and/or service or an equivalent.

Insufficient time to respond to the ITB.

Our schedule would not permit us to perform.

Remarks: _____

METRO'S SMALL BUSINESS STANDARDS**AS DEFINED IN SECTION 4.44.010 OF THE METROPOLITAN NASHVILLE PROCUREMENT REGULATIONS;**

A Small Business satisfies all of the following criteria:

- (a) A United States business which is independently owned and operated, and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation;
- (b) Either has no more than the following number of employees or has no more than the following annual sales volume for the applicable industry; and

| INDUSTRY | ANNUAL SALES VOLUME | MAXIMUM NUMBER OF EMPLOYEES* |
|---|---------------------|------------------------------|
| Agriculture, Forestry, Fishing | \$500,000 | 9 |
| Architectural/Design/Engineering | \$2,000,000 | 30 |
| Construction | \$2,000,000 | 30 |
| Educational | \$1,000,000 | 9 |
| Finance, Insurance, Real Estate | \$1,000,000 | 9 |
| Information Systems/Technology | \$2,000,000 | 30 |
| Manufacturing | \$2,000,000 | 99 |
| Marketing/Communications/Public Relations | \$2,000,000 | 30 |
| Medical/Healthcare | \$2,000,000 | 30 |
| Mining | \$1,000,000 | 49 |
| Retail Trade | \$750,000 | 9 |
| Service Industry | \$500,000 | 9 |
| Transportation, Commerce, and Utilities | \$1,000,000 | 9 |
| Wholesale Trade | \$1,000,000 | 19 |

- (c) Meets the following additional criteria:

1. Has demonstrated capability to perform independently a substantial portion of the contract they seek, or a substantial portion of the subcontract for which they are proposed by a bidder or offeror, as specified by the Purchasing Agent;
2. Not share or jointly use office space, production, marketing and sales, business support systems, personnel, or equipment with any business not classified by Metro as a small business (i.e., a large business);
3. Has existed as a legal business entity for a minimum of one year (twelve months of continuous business enterprise), performing independently and satisfactorily and achieving a minimum of \$35,000.00 sales income (collected sales dollars not simply booked sales);
4. Not be owned, controlled, or directed by individuals or groups of individuals who own, control, or direct a large business involved in the same category of work as the business for which small business status is sought;
5. If a supplier, be an authorized regular distributor with normal wholesale agreements for the Product or products to be supplied; and

6. If a construction contractor, be licensed as required by the state to perform the work for which it has submitted a bid or has been proposed by a prime as a subcontractor.

*NOTE: Employee means a person (or persons) employed on a full-time (or full-time equivalent), a permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least a 40 hour work week. The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes. The owner(s) are excluded from this classification.



SAMPLE ONLY

(DO NOT FILL OUT CONTRACT)

**CONTRACT BETWEEN
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND**

FOR PURCHASE OF GOODS

This contract is initiated by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY** ("METRO") and ("CONTRACTOR").

This contract consists of the following documents:

- ***This Contract Document,***
- ***Solicitation, Numbered*** ,
- ***CONTRACTOR's Response, and***
- ***Exhibits:***
 - ***Exhibit A, Pricing & Escalation/De-escalation (if allowed),***
 - ***Exhibit B, Escalation/De-escalation (if allowed)***
 - ***Exhibit C, ACH Form for Electronic Payment***
 - ***Exhibit D, Affidavits***
 - ***Exhibit E, Contractor Supplied Insurance Forms,***
 -

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- ***Any Properly Executed Contract Amendment (most recent with first priority),***
- ***This Document and All Exhibits,***
- ***Solicitation, Numbered*** , and
- ***CONTRACTOR's Response***

The parties hereby agree to the following terms and conditions:

I. Duties and Responsibilities of CONTRACTOR. CONTRACTOR agrees to provide and METRO agrees to purchase the following services:

II. Delivery and/or Installation.

- A. All deliveries are F.O.B. Destination, Inside Delivery, as defined in the shipping instructions.
- B. METRO assumes no liability for any goods delivered without a purchase order. All deliveries shall be made to _____ within () days of the issuance of the purchase order.
- C. Installation is required. If required, installation shall be completed within () days of the delivery date.

III. Term.

- A. The term of this contract will begin on the date this contract is signed by all required parties and filed in the office of the Metropolitan Clerk. METRO contemplates that the contract term will begin on or about _____ (beginning date). The initial contract term will end sixty (60) months from the beginning date.
- B. This contract may be extended by contract amendment. The option to extend shall be exercised by and in the discretion of the Purchasing Agent. In no event shall the term of this contract, including extensions, exceed sixty (60) months from the date of filing with the Metropolitan Clerk's Office.

IV. Compensation. This contract has an estimated value of _____ over the life of the contract. The pricing details are demonstrated in **Exhibit A.** CONTRACTOR shall be paid as work is completed and METRO is accordingly invoiced based on the following schedule: (check if applicable)

- A. ☐ single payment following completion of contract,
- B. ☐ monthly as work is completed and approved by METRO,
- C. ☐ quarterly as work is completed and approved by METRO,
- D. ☐ as milestones are completed and approved by METRO,
- E. ☐ other (explain)

There will be no other charges or fees for the performance of this contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

V. Escalation/De-escalation. This contractor is eligible for annual escalation/de-escalation adjustments. If the contract is eligible, the request for adjustment must be submitted to the Purchasing Agent no less than sixty (60) days prior to the **annual anniversary** of the contract signing by the contractor. Any such adjustment shall become effective on the anniversary of the filing of the contract

with the Metro Clerk's office. The amount of escalation is subject to the process identified in **Exhibit B**.

VI. Electronic Payment. Metro requires as a condition of this contract that the Contractor shall complete and sign Metro's form authorizing electronic payments to the Contractor. **Exhibit C**.

VII. Taxes. METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

VIII. Warranty.

- A. CONTRACTOR warrants that for a period of one year from date of delivery and/or installation, whichever is later, the goods provided, including software, shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained. Such purposes are .
- B. During the warranty period, METRO may, at its option, request that CONTRACTOR repair or replace any defective goods, by written notice to CONTRACTOR. In that event, CONTRACTOR shall repair or replace the defective goods, as required by METRO, at CONTRACTOR's expense, within thirty (30) days of written notice. Alternatively, METRO may return the defective goods, at CONTRACTOR's expense, for a full refund. Exercise of either option shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of CONTRACTOR's breach of warranty.

IX. License. CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or the CONTRACTORs response to the solicitation.

X. Reserved.

XI. Copyright, Trademark, Service Mark, or Patent Infringement.

- A. CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and

costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

- B. If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:
 - 1. Procure for METRO the right to continue using the products or services.
 - 2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing.
 - 3. Remove the products or discontinue the services and cancel any future charges pertaining thereto.
 - 4. Provided, however, that CONTRACTOR will not exercise option b.3. until CONTRACTOR and METRO have determined that options b.1. and b.2. are impractical.
- C. CONTRACTOR shall have no liability to METRO, however, if any such infringement or claim thereof is based upon or arises out of:
 - 1. The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR.
 - 2. The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
 - 3. The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

XII. Termination

- A. *Breach.* Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of

this contract, METRO shall have the right to immediately terminate the contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

- B. *Lack of Funding.* Should funding for this contract be discontinued, METRO shall have the right to terminate the contract immediately upon written notice to CONTRACTOR.
- C. *Notice by Metro.* METRO may terminate this contract at any time upon thirty (30) days written notice to CONTRACTOR.

XIII. Maintenance of Records. CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

XIV. Monitoring. The CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

XV. METRO Property. Any METRO property, including but not limited to books, records and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be METRO property.

XVI. Modification of Contract. This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

XVII. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

XVIII. Waiver. No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

XIX. Employment.

- A. CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
- B. CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this contract.
- C. Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

XX. Procurement Nondiscrimination Program Requirements

- A. The consideration and contact of minority-owned and/or woman-owned business enterprises (MWBE) was not required for a *Responsive* offer.
- B. The provision of the following items was not a part of the proposal package. The forms for compliance with the Procurement Nondiscrimination Program are made a part of this contract by reference.
 - 1. *Covenant of Nondiscrimination*
Your firm has committed to the Covenant of Nondiscrimination when registering with Metro to do business. To review this document, go to Nashville.gov and visit the Procurement or Business Assistance web pages (it is NOT necessary to resubmit this with each proposal/contract).
 - 2. *Statement of Interested, Notified, Bid Amount, and Successful MWBEs Selected.*
Each proposer must provide the enclosed form indicating that the proposer has delivered written notice to at least three (3) available MWBEs if use of MWBEs is reasonable and if BAO can provide at least three MWBEs for the applicable category. The interested, notified, successful and unsuccessful bid prices are one of the several required responses on the form.
 - 3. *Letter of Intent to Perform as a Subcontractor/Joint Venture.*
In the event that a proposer submits the use subcontractors, suppliers and/or joint ventures, a letter of intent signed by both the

subcontractor/supplier/joint venturer must be submitted to Procurement by the end of the second business day following issuance of the intent to award letter.

4. *Registration and Certification.*

To be considered for the purpose of being Responsive, the subcontractor, supplier and/or joint venturer must be registered online with Metro by the proposal due date. Certification is required by the filing date of the contract with the Metro Clerk's Office.

XXI. Compliance with Laws. CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations. **Exhibit D.**

XXII. Contingent Fees. CONTRACTOR hereby represents that CONTRACTOR has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts. **Exhibit D.**

XXIII. Nondiscrimination. It is the policy of the METRO not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, CONTRACTOR certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. Accordingly, all Proposers entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination. **Exhibit D.**

XXIV. Ethical Standards. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from

another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

XXV. Insurance. During the term of this Contract, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof the types and amounts of insurance identified (**Exhibit E**) below by a checked box and in the solicitation:

- A. ☒ Products Liability Insurance in the amount of one million (\$1,000,000.00) dollars (If the vendor will be shipping to a receiving department of METRO)
- B. ☒ General Liability Insurance in the amount of one million (\$1,000,000.00) dollars
- C. ☐ Professional Liability Insurance in the amount of one million (\$1,000,000.00) dollars
- D. ☒ Automobile Liability Insurance in the amount one million (\$1,000,000.00) dollars (if vendor will be making on-site deliveries)
- E. ☒ Worker's Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee. (Not required for companies with fewer than five (5) employees.)
- F. ☐ Other Insurance ...
- G. Such insurance shall:
 - 1. Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds

with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

2. For any claims related to this agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects METRO, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.
3. Automotive Liability Insurance including vehicles owned, hired, and non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.
4. Worker's Compensation (If applicable), CONTRACTOR shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance. CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's workers' compensation insurance coverage.
5. *Other Insurance Requirements.* CONTRACTOR shall:
 - a. Prior to commencement of services, furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW
INSURANCE AND RISK MANAGEMENT
METRO COURTHOUSE
1 PUBLIC SQUARE, SUITE 108
NASHVILLE, TENNESSEE 37201**

- b. Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.
 - c. Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.

- d. Maintain such insurance from the time services commence until services are completed and attach the certificates of insurance in the METRO system. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by METRO as a material breach of lease.
- e. Place such insurance with insurer licensed to do business in Tennessee and having A.M.Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.
- f. Require all subcontractors to maintain during the term of the agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall file subcontractor's certificates of insurance in METRO's system.
- g. Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO prior to the commencement of services.
- h. If the CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

XXVI. Indemnification and Hold Harmless. CONTRACTOR will indemnify and hold harmless METRO, its officers, agents and employees from:

- A. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,
- B. Any claims, damages, penalties, costs and attorney fees arising from any failure of CONTRACTOR, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. METRO will not indemnify, defend or hold harmless in any fashion the CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that the CONTRACTOR may provide.

D. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

XXVII. Attorney Fees. CONTRACTOR agrees that in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of this contract, and in the event METRO prevails in such action, CONTRACTOR shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

XXVIII. Assignment--Consent Required. The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this contract, neither this contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT
DIVISION OF ACCOUNTS
DEPARTMENT OF FINANCE
222 THIRD AVENUE NORTH, SUITE 750
NASHVILLE, TENNESSEE 37201**

XXIX. Entire Contract. This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

XXX. Force Majeure. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

XXXI. Governing Law. The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of

the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the CONTRACTOR may provide.

XXXII. Venue. Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.

XXXIII. Severability. Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

XXXIV. Notices and Designation of Agent for Service of Process.

A. All notices to METRO shall be mailed or hand delivered to:

Department: **Division of Purchases**
Att'n: **Jeff L. Gossage**
Addr: **222 Third Avenue, North**
 Suite 601
 Nashville, Tennessee 37201

B. Notices to CONTRACTOR shall be mailed or hand delivered to:

CONTRACTOR:

Att'n:

Addr:

Telephone:

Fax:

E-mail:

C. CONTRACTOR designates the following as the CONTRACTOR's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Designated Agent:

Att'n:

Addr:

XXXV. Effective Date. This contract shall not be binding upon the parties until it has been signed first by the CONTRACTOR and then by the authorized representatives of the Metropolitan Government and has been filed in the office of the Metropolitan Clerk.

**THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

APPROVED AS TO PROJECT SCOPE:

Department Head

**APPROVED AS TO COMPLIANCE WITH
PROCUREMENT CODE:**

Purchasing Agent

**APPROVED AS TO AVAILABILITY
OF FUNDS:**

Director of Finance

**APPROVED AS TO PROOF OF
INSURANCE:**

Risk Manager

**APPROVED AS TO FORM AND
LEGALITY:**

Metropolitan Attorney

**FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:**

Date: _____

CONTRACTOR

Company: _____

BY: _____

Print:

Title: _____

**Sworn to and subscribed to before me, a
Notary Public, this _____
day of _____, 200 __, ,
by _____,
the _____ of
CONTRACTOR and duly authorized to
execute this instrument on Contractor's
behalf.**

Notary Public

My Commission Expires _____

Exhibit A
Pricing

The pricing model for this contract is as follows:

Exhibit B
Escalation/De-escalation

This Exhibit shall set forth the method of calculation, if permitted by the contract, for price adjustments in subsequent contract periods.

Exhibit C
ACH Form for Electronic Payment

This Exhibit must be completed by the CONTRACTOR to facilitate payment of services.

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
DEPARTMENT OF FINANCE
TREASURY DIVISION
ACH (AUTOMATED CLEARING HOUSE) CREDITS**

Company Name: _____

Federal Tax ID Number or Social Security Number (under which you are doing business with Metro) _____

I (We) hereby authorize the Treasurer of the Metropolitan Government of Nashville and Davidson County, hereafter called METRO TREASURER, to initiate credit entries to my (our) (select type of account) ☐ CHECKING or ☐ SAVINGS account indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

This authority is to remain in full force and effect until METRO TREASURER has received written notification from me (or either of us) of its termination in such time and in such manner as to afford METRO TREASURER and DEPOSITORY a reasonable opportunity to act on it.

.....
Many banking institutions use different numbers for ACH. Please call your bank for verification of ACH transit and account number.

Bank Official contacted: _____ Phone _____

.....
DEPOSITORY/BANK NAME _____ BRANCH _____

CITY _____ STATE _____

ACH TRANSIT/ABA NO. _____ ACCOUNT NO. _____

NAME(S) _____

(Please print names of authorized account signatory)

SIGNED _____ DATE _____

SIGNED _____ DATE _____

Phone _____

Please mail to:
Finance - Division of Accounts
Attn: Starla Friedmann
222 3rd Ave N Ste 750
Nashville, TN 37201

or Fax to: 615-862-6109
Attn: Starla Friedmann

Exhibit D
Affidavits

State of _____ **County of** _____

As used herein, "Offeror" will include bidders and proposers.

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the _____ (Title) of _____ (Offeror), and that Offeror is presently in compliance with, and will continue to maintain compliance with, all applicable laws. Thus, Affiant states that Offeror has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Offeror is current on its payment of all applicable gross receipt taxes and personal property taxes.

Contingent Fees: In accordance with METRO's 1992 Procurement Code, it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the Offeror has not retained anyone in violation of the foregoing.

Nondiscrimination: Contractor, after being first duly sworn, affirms that by its employment policy, standards and practices it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, religion, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with handicaps and/or disabilities. It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, religion, national origin or handicap and/or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this contract, contractor certifies and warrants it will comply with this policy.

And Further Affiant Sayeth Not:

By: _____

Title: _____

Address: _____

Sworn to and subscribed before me on this ____ day of _____, 200____.

Notary Public
My commission expires: _____

Exhibit E
Insurance Forms

This Exhibit shall house the proof of insurance in the amounts and form set required by the contract.